



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,002	04/14/2004	Carey L. Walley	100041-41207	5929

7590 06/26/2007
MARK P. LEVY, ESQ.
THOMPSON HINE LLP
2000 COURTHOUSE PLAZA NE
10 W. SECOND STREET
DAYTON, OH 45402-1758

EXAMINER

BATTULA, PRADEEP CHOUDARY

ART UNIT	PAPER NUMBER
----------	--------------

3722

MAIL DATE	DELIVERY MODE
-----------	---------------

06/26/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/824,002

Applicant(s)

WALLEY, CAREY L.

Examiner

Pradeep C. Battula

Art Unit

3722

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 27 and 28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 8/3/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1 – 6, 13, and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Jameson (U.S. 4,910,058).

In regards to Claim 1, Jameson discloses a tamper evident label system comprising a label sheet 18 having an adhesive located thereon 24 (Column 5, Lines 28 – 32, 42 – 44; Figure 2, Item 18; Figure 5, Items 18, 24) and at least one tear guide line or score line 46 located thereon or therethrough (Column 6, Lines 35 – 39; Figure 2, Item 46), said label sheet including indicia (Column 6, Lines 40 – 44).

With respect to the label sheet's indicia indicating the tamper evident nature of said label, Jameson discloses the claimed invention except for the specific arrangement and/or content of indicia (tamper evident) set forth in the claim(s). It has been held that when the claimed printed matter is not functionally related to the substrate it will not distinguish the invention from the prior art in terms of patentability. *In re Gulack*, 217 USPQ 401, (CAFC 1983). The fact that the content of the printed matter placed on the substrate may render the device more convenient by providing an individual with a specific type of text does not alter the functional relationship. Mere support by the

Art Unit: 3722

substrate for the printed matter is not the kind of functional relationship necessary for patentability.

The examiner asserts that the printable label comprising indicia is the same structure claimed by applicant and the sole difference is in the content of the printed material. Thus, there is no novel and unobvious functional relationship between the printed matter (tamper evident indicia) and the substrate (label sheet) which is required for patentability.

Accordingly, there being no functional relationship of the printed material to the substrate, as noted above, there is no reason to give patentable weight to the content of the printed matter which, by itself, is non-statutory subject matter.

In regards to Claim 2, as applied to Claim 1, Jameson further discloses wherein said label sheet is generally flat and includes an adhesive 24 generally covering one side thereof (Column 5, Lines 42 – 44; Figure 2, Item 24).

In regards to Claim 3, as applied to Claim 2, Jameson further discloses wherein said label sheet is configured such that when said label sheet is adhered to a substrate by said adhesive (Column 6, Lines 55 – 61), and any attempted removal of said label sheet from said substrate causes said label sheet to tear at or adjacent to said at least one tear guide line or score line (Column 6, Lines 35 – 39). Furthermore, even though the citation states the labels go on a product, the labels would have the exact same effect on a substrate.

In regards to Claim 4, as applied to Claim 1, Jameson further discloses wherein said label sheet is generally rectangular in top view (Figure 2, Item 18; See Attachment).

In regards to Claims 5 and 6, as applied to Claim 4, Jameson further discloses wherein said label sheet 18 includes four diagonally oriented tear guide lines or score lines located thereon or therethrough (Column 6, Lines 36 – 39; Figure 2, Items 18, 46).

In regards to Claim 13, as applied to Claim 1, Jameson further discloses wherein said label sheet 18 includes an outer perimeter, and wherein said at least one tear guide line 46 is entirely spaced apart from said outer perimeter (Figure 2, Item 46; Figure 9 – the tear lines do not go all the way to the outer edge and this edge is the outer perimeter).

In regards to Claim 25, Jameson discloses a tamper evident label system comprising a generally flat, generally rectangular label sheet 18 (Figure 2, Item 18; See attachment) having an outer perimeter (Figure 9 – outer edge of label where score lines 46 do not meet) and an adhesive 24 located on one side thereof (Column 5, Lines 28 – 32, 42 – 44; Figure 2, Item 18; Figure 5, Items 18, 24) and four tear guide line 46 or score line located thereon or therethrough (Column 6, Lines 35 – 39; Figure 2, Item 46), each tear guide line or score line being entirely spaced apart from said outer perimeter and being diagonally oriented (Figure 2, Item 46; Figure 9), each tear guide line or score line extending from generally adjacent a corner of said label sheet to a center portion of said label sheet (Figure 2, Item 46; Figure 9), said label sheet including indicia (Column 6, Lines 40 – 44).

With respect to the label sheet's indicia indicating the tamper evident nature of said label, Jameson discloses the claimed invention except for the specific arrangement and/or content of indicia (tamper evident) set forth in the claim(s). It has been held that when the claimed printed matter is not functionally related to the substrate it will not distinguish the invention from the prior art in terms of patentability. *In re Gulack*, 217 USPQ 401, (CAFC 1983). The fact that the content of the printed matter placed on the substrate may render the device more convenient by providing an individual with a specific type of text does not alter the functional relationship. Mere support by the substrate for the printed matter is not the kind of functional relationship necessary for patentability.

The examiner asserts that the printable label comprising indicia is the same structure claimed by applicant and the sole difference is in the content of the printed material. Thus, there is no novel and unobvious functional relationship between the printed matter (tamper evident indicia) and the substrate (label sheet) which is required for patentability.

Accordingly, there being no functional relationship of the printed material to the substrate, as noted above, there is no reason to give patentable weight to the content of the printed matter which, by itself, is non-statutory subject matter.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

Art Unit: 3722

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. . . Claim 7 – 12, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jameson in view of Akiyama (793,495).

In regards to Claim 7, as applied to Claim 1, Jameson does not disclose a containment means including a body, a flap, and an inner cavity having a mouth, and wherein said flap is movable between a closed position wherein said flap generally covers said mouth and an open position wherein said flap generally does not cover said mouth and wherein said tamper evident label sheet is secured to said body and to said flap to maintain said flap in a closed position..

Akiyama discloses a containment means including a body (Figure 2), a flap D, and an inner cavity having a mouth, shown at A, (Figure 1, Items A, D), and wherein said flap is movable between a closed position wherein said flap generally covers said mouth and an open position wherein said flap generally does not cover said mouth (Page 1, Lines 81 – 85; Page 2, Lines 9 - 30; Figure 1, items A, D; Figure 5, Item, D, outline of C), and a tamper evident label sheet G, with adhesive, is secured to said body and to said flap D to maintain said flap in a closed position (Page 2, Lines 41 – 57; Figure 5, Items outline of C, D, G). Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to use apply a tamper as taught by Jameson to the tip of an envelope tongue as taught by Akiyama in order to allow for an individual to use a basic envelope without any special features and still provide it with a security measure feature (Column 6, Lines 35 – 39; Jameson).

In regards to Claim 8, as applied to Claim 7, Jameson modified by Akiyama further discloses wherein said label sheet 18 is securely adhered to said containment means such that any attempted removal of said label sheet from said containment means causes said label sheet to tear at or adjacent to said at least one tear guide line or score line or causes tearing of said containment means (Column 5, Lines 42 – 44; Since a permanent adhesive is used, the containment means will tear if the label sheet is removed due to the force of the adhesive; Jameson).

In regards to Claim 9, as applied to Claim 7, wherein attempted movement of said flap from said closed position to said open position generally causes said label sheet to tear at or adjacent to said at least one tear guide line or score line (Column 6, Lines 35 – 39; Jameson; This is inherent because instead of directly trying to remove the label it is trying to be removed by an item it is directly covering so whichever slits are over such an item will tear).

In regards to Claim 10, as applied to Claim 7, Jameson modified by Akiyama further discloses wherein said flap D includes an outer edge, outline of D, (Figure 5, Items D, outline of D, G; Akiyama), and wherein said at least one tear guide line or score line is generally aligned with said outer edge (Considering one of the portions between the scores 46 of Jameson removes from the label it would be obvious to one having ordinary skill in the art to align an opening edge with one of the sections because this inherently produces the best).

In regards to Claim 11, as applied to Claim 10, Jameson modified by Akiyama further discloses wherein said outer edge, outline of D, of said flap D includes a

generally "V" shaped tip (Figure 5, Items, D, outline of D; Akiyama), and wherein said at least one tear guide line or score line is generally "V" shaped and generally aligned with said tip (Page 2, Lines 45 – 49; Akiyama; Please review Claim 10 for the explanation of tamper label placement).

In regards to Claim 12, as applied to Claim 11, Jameson modified by Akiyama further discloses wherein said at least one tear guide line 46 includes at least two tear guide lines 46 forming an angle therebetween (Figure 2, Item 46; Jameson), said tear guide lines being spaced apart from each other (Figure 9; Jameson).

In regards to Claim 26, as applied to Claim 25, Jameson does not disclose a containment means including a body, a flap, and an inner cavity having a mouth, and wherein said flap is movable between a closed position wherein said flap generally covers said mouth and an open position wherein said flap generally does not cover said mouth, and wherein said tamper evident label sheet is secured to said body and said flap to maintain said flap in said closed position, and wherein said label sheet is securely adhered to said containment means such that any attempted movement of said flap from said closed position to said open position generally causes said label sheet to tear at or adjacent to at least one of said tear guide lines or score lines.

Akiyama discloses a containment means including a body (Figure 2), a flap D, and an inner cavity having a mouth, shown at A, (Figure 1, Items A, D), and wherein said flap is movable between a closed position wherein said flap generally covers said mouth and an open position wherein said flap generally does not cover said mouth (Page 1, Lines 81 – 85; Page 2, Lines 9 - 30; Figure 1, items A, D; Figure 5, Item, D,

Art Unit: 3722

outline of C), and a tamper evident label sheet G, with adhesive, is secured to said body and to said flap D to maintain said flap in a closed position (Page 2, Lines 41 – 57; Figure 5, Items outline of C, D, G). Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to use apply a tamper as taught by Jameson to the tip of an envelope tongue as taught by Akiyama in order to allow for an individual to use a basic envelope without any special features and still provide it with a security measure feature (Column 6, Lines 35 – 39; Jameson).

Applying Jameson's label would result in said label tearing at or adjacent to at least one of said tear guide lines or score lines (Column 6, Lines 35 – 39; Jameson).

3. Claim 14 – 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Akiyama in view of Jameson.

In regards to Claim 14, Akiyama discloses a containment means including a body (Figure 2), a flap D, and an inner cavity having a mouth, shown at A, (Figure 1, Items A, D), and wherein said flap is movable between a closed position wherein said flap generally covers said mouth and an open position wherein said flap generally does not cover said mouth (Page 1, Lines 81 – 85; Page 2, Lines 9 - 30; Figure 1, items A, D; Figure 5, Item, D, outline of C), and a tamper evident label sheet G, with adhesive, is secured to said body and to said flap D to maintain said flap in a closed position (Page 2, Lines 41 – 57; Figure 5, Items outline of C, D, G).

Akiyama does not disclose that the label sheet has at least one tear guide line or score line located thereon or there through.

Jameson discloses a label sheet 18 having an adhesive located thereon 24 (Column 5, Lines 28 – 32, 42 – 44; Figure 2, Item 18; Figure 5, Items 18, 24) and at least one tear guide line or score line 46 located thereon or therethrough (Column 6, Lines 35 – 39; Figure 2, Item 46). Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to use Jameson's tamper label in place of Akiyama's in order to allow for an individual to use a basic envelope without any special features and still provide it with a security measure feature (Column 6, Lines 35 – 39; Jameson).

In regards to Claim 15, as applied to Claim 14, Akiyama modified by Jameson further discloses wherein said label sheet includes indicia (Column 6, Lines 40 – 44; Jameson).

With respect to the label sheet's indicia indicating the tamper evident nature of said label, Jameson discloses the claimed invention except for the specific arrangement and/or content of indicia (tamper evident) set forth in the claim(s). It has been held that when the claimed printed matter is not functionally related to the substrate it will not distinguish the invention from the prior art in terms of patentability. *In re Gulack*, 217 USPQ 401, (CAFC 1983). The fact that the content of the printed matter placed on the substrate may render the device more convenient by providing an individual with a specific type of text does not alter the functional relationship. Mere support by the substrate for the printed matter is not the kind of functional relationship necessary for patentability.

The examiner asserts that the printable label comprising indicia is the same structure claimed by applicant and the sole difference is in the content of the printed material. Thus, there is no novel and unobvious functional relationship between the printed matter (tamper evident indicia) and the substrate (label sheet) which is required for patentability.

Accordingly, there being no functional relationship of the printed material to the substrate, as noted above, there is no reason to give patentable weight to the content of the printed matter which, by itself, is non-statutory subject matter.

In regards to Claim 16, as applied to Claim 14, Akiyama modified by Jameson further discloses wherein said label sheet is generally flat and includes an adhesive 24 generally covering one side thereof (Column 5, Lines 42 – 44; Figure 2, Item 24; Jameson).

In regards to Claim 17, as applied to Claim 16, Akiyama modified by Jameson further discloses wherein said label sheet is securely adhered (Column 6, Lines 55 – 61; Jameson) to said containment means such that any attempted removal of said label sheet from said containment means causes said label sheet to tear at or adjacent to said at least one tear guide line or score line (Column 6, Lines 35 – 39; Jameson) or causes said containment means to tear since the adhesive is permanent. Furthermore, even though the citation states the labels go on a product, the labels would have the exact same effect on a substrate.

In regards to Claim 18, as applied to Claim 16, Akiyama modified by Jameson further discloses wherein said label sheet is securely adhered to said containment

Art Unit: 3722

means such that any attempted movement of said flap from said closed position to said open position generally causes said label sheet to tear at or adjacent to said at least one tear guide line or score line (Column 6, Lines 35 – 39; Jameson; This is inherent because instead of directly trying to remove the label it is trying to be removed by an item it is directly covering so whichever slits are over such an item will tear).

In regards to Claim 19, as applied to Claim 14, Akiyama modified by Jameson further discloses wherein said flap D includes an outer edge, outline of D, (Figure 5, Items D, outline of D, G; Akiyama), and wherein said at least one tear guide line or score line is generally aligned with said outer edge (Considering one of the portions between the scores 46 of Jameson removes from the label it would be obvious to one having ordinary skill in the art to align an opening edge with one of the sections because this inherently produces the best).

In regards to Claim 20, as applied to Claim 19, Akiyama modified by Jameson further discloses wherein said outer edge, outline of D, of said flap D includes a generally "V" shaped tip (Figure 5, Items, D, outline of D; Akiyama), and wherein said at least one tear guide line or score line is generally "V" shaped and generally aligned with said tip (Page 2, Lines 45 – 49; Akiyama; Please review Claim 19 for the explanation of tamper label placement).

In regards to Claim 21, as applied to Claim 14, Akiyama modified by Jameson further discloses wherein said label sheet is generally rectangular in top view (Figure 2, Item 18; Jameson See Attachment).

Art Unit: 3722

In regards to Claims 22 and 23, as applied to Claim 21, Akiyama modified by Jameson further discloses wherein said label sheet 18 includes four diagonally oriented tear guide lines or score lines located thereon or therethrough (Column 6, Lines 36 – 39; Figure 2, Items 18, 46; Jameson).

In regards to Claim 21, as applied to Claim 14, Akiyama modified by Jameson further discloses wherein said label sheet 18 includes an outer perimeter, and wherein said at least one tear guide line 46 is entirely spaced apart from said outer perimeter (Figure 2, Item 46; Figure 9 – the tear lines do not go all the way to the outer edge and this edge is the outer perimeter; Jameson).

Art Unit: 3722

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pradeep C. Battula whose telephone number is 571-272-2142. The examiner can normally be reached on Monday - Thursday 7:00AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica S. Carter can be reached on 571-272-4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PCB
Patent Examiner
June 21, 2007


MONICA CARTER
SUPERVISORY PATENT EXAMINER